

Californians for Renewable Energy, Inc.(CARE)

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From: Michael E. Boyd -President CARE

Ref: CARE's letter in regards to piecemealing of the CEQA review of the MEC
FDOC and PSD permit

Dear Ellen Garvey,

CARE has reviewed the FDOC on the Metcalf Energy Center (MEC) and is very concerned over the CEQA-adequacy of this document . Pursuant to the California Public Records Act (Government Code section 6250 et seq.), and particularly sections 6256 and 6257 of the Government Code, we hereby request that you provide CARE the following information in response to questions in written form.

- 1) Is BAAQMD subject to the California Environmental Quality Act (CEQA) in its Final Determination of Compliance (FDOC) on the MEC?
- 2) Does BAAQMD have its own Certified Regulatory Program?
- 3) Is the FDOC the District's final CEQA opinion on this project?
- 4) If that is the case, when does the clock for a CEQA legal challenge begin?
- 5) If that is not the case, why is the FDOC called Final ?
- 6) Under what statutory authority can the District issue an incomplete Final document?

- 7) Is there any appeal process available to the public to appeal the issuance of an incomplete FDOC to the BAAQMD board of directors?

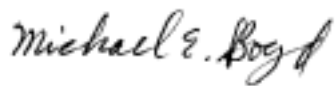
The way the applicant (a partnership of multi-national corporations: Calpine and Bechtel) is being allowed to piecemeal the FDOC/PSD process is analogous to the strongly forbidden chopping up [of] a proposed project into bite-size pieces which, individually considered, might be found to have no significance on the environment but which when considered in their entirety may have profound significance. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716, citing *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171, 1172; see also *Bozung v. LAFCO* (1975) 13 Cal.3d at 283-284; *Sundstrom*, 202 Cal.App.3d 296, 309.) In the present case we have a chopping up of the CEQA duty to provide required information (on air emission impacts on public health, and threatened and endangered species) into bite-size pieces that trivialize the nature and extent of project impacts. In addition, the piecemealing requires that CARE respond without requiring a comprehensive analysis by the applicant, and without providing structure or finality to the process. When the process gets near the end, strict time lines are imposed. These create additional burdens on CARE and other members of the public that further hinder, if not completely prevent, full and meaningful public participation as required by CEQA. This is especially onerous because the process is already heavily weighed in favor of an applicant with virtually unlimited resources. By accident or intent, the applicant's piece-by-piece production of the required information has the effects of limiting public participation, precluding opposition, and preventing the issues from being decided upon their own merits. The lack of a comprehensive analysis risks serious error in the process.

In addition to greatly increasing the cost of public participation, the existing BAAQMD process, also makes it extremely difficult if not virtually impossible to intelligently determine if and when to retain additional experts to continue

participating in the ongoing review process in a knowing and meaningful manner. As it stands, this is a clear violation of the strong CEQA right of public participation.

To the extent that it is not already too late, immediate steps should be taken to cure the process's public participation defects. In the spirit of good faith and reasonableness, CARE is willing to participate in a public hearing, an appeal, or other meeting—however labeled, provided only that it be fair—to deal with the related problems of piecemealing the CEQA review and the consequent lack of a comprehensive analysis. It is essential that this occur before—not after—the MEC project is approved, if it does eventually receive approval. We respectfully demand that appropriate changes be made to rectify these defects. In particular, we require that the applicant be required to submit a comprehensive analysis in a timely fashion and that the process not be considered complete until the public has had ample opportunity to respond to this comprehensive analysis.

Of course, the BAAQMD's refusal to accept our offer and properly address our public participation and CEQA concerns—which include but certainly are not limited to the issues we've discussed thus far—will undoubtedly be raised as an issue in any ensuing judicial litigation.

A handwritten signature in cursive script that reads "Michael E. Boyd".

Michael E. Boyd—President, CARE